IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION ST.NO.7558 OF 2006

IN

SECOND APPEAL NO.930 OF 2004

Gajanan Udhav Kamble ...Petitioner

Vs.

Maruti Shripati Charwad ...Respondent

Mr.D.N.Salvi and Ms S.M.Kelkar for the Petitioner
Mr.S.J.Rairkar for the Respondent.

CORAM: A.S.OKA, J.
DATED: NOVEMBER 17,2006.

P.C.:

1. Heard learned Advocates for the parties. The Review Petitioner is the Appellant in the Second Appeal and the original Plaintiff. A suit simplicitor for perpetual injunction based on title was dismissed by the Trial Court though the title was held to be established. In the Appeal preferred by the Review Petitioner, the decree of the Trial Court has been confirmed. The first Appellate Court held that the Plaintiff has not proved the title. The Second Appeal has been dismissed by order dated 5th May 2005.

2. The submission of the learned Advocate for the Review Petitioner is that there is an error apparent on the face of

the record in much as though the Respondent had admitted execution of the sale deed allegedly executed by his father in favour of the Review Petitioner, in paragraph 3 of the order passed in the Second Appeal, it is observed that execution of the sale deed is specifically denied. He invited my attention to the averments made in paragraph 3 of the original written statement as well as in paragraph 3 of the additional written statement of the Respondent. He submitted that as the execution of the sale deed by the father of the Respondent was admitted by the Respondent and as the sale deed was marked as an exhibit, contents of the sale deed can be read in evidence to show that under the sale deed, the Petitioner was placed in possession of the property in question. He, therefore, submitted that there is an error apparent on the face of the record in as much as this Court has upheld a finding that the sale deed is not duly proved.

3. I have considered the submissions. The first Appellate Court has observed that the case of title and possession of the Review Petitioner was based on the sale deed executed by the father of the Respondent and as the sale deed is not proved, title is not established. It is true that in the first written statement, there is no specific denial of the execution of the sale deed. In the second written statement, an assertion is made that the Review Petitioner obtained signature of the father of the Respondent on the sale deed by

misleading and cheating him. It is stated that the father of the Respondent at that time was very old. The Respondent in his examination-in-chief stated that his father has not sold the property to anyone.

4. The evidence of an employee from the office of Sub Registrar has also been considered by the Appellate Court. After considering all these aspects, this court has confirmed a finding of the Appellate court that the Review Petitioner has not established his title.

5. A suit simplicitor for injunction filed by the Review Petitioner was based on title on the basis of sale deed. As the finding has been recorded that the sale deed is not duly proved, the Review Petitioner has been denied the decree of injunction. There is no error apparent on the face of the record. Even otherwise also there is no ground for review. Review Petition is rejected.

Judge.